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9
10 UNITED STATES DISTRICT COURT
11
12 DISTRICT OF ARIZONA

13 Nicole Spreitzer,

14 Plaintiff,

15 vs. No. _____

16 Stingers Double D, LLC, Dale Hanson, and
17 Dana Hanson,
18 Defendants.

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1 U.S.C. § 207(a). Under the FLSA, employers must pay all non-exempt employees a minimum
2 wage of pay for all time spent working during their regular 40 hour workweeks. See 29
3 U.S.C. § 206(a). The FLSA's definition of the term "wage," in turn, recognizes that under
4 certain circumstances, an employer of tipped employees may credit a portion of its
5 employees' tips against its minimum wage obligation, a practice commonly referred to as
6 taking a "tip credit." See id. § 203(m).

8 **JURISDICTION AND VENUE**

9 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29
10 U.S.C. § 201, *et seq.* This civil action arises under the Constitution and law of the United
11 States.

12 2. Venue is proper in this district pursuant to 28 U.S.C. § 1331(b)(ii) because acts
13 giving rise to the claims of Plaintiff occurred within the District of Arizona, and Defendants
14 regularly conduct business in and have engaged in the wrongful conduct alleged herein –
15 and, thus, are subject to personal jurisdiction in – this judicial district.

16 **PARTIES**

17 3. At all material times, Plaintiff is an individual residing in Maricopa County,
18 Arizona, and is a former employee of Defendants.

19 4. At all material times, Defendant Stingers Double D, L.L.C. was a limited
20 liability company duly licensed to transact business in the State of Arizona. Defendant
21 Stingers Double D, L.L.C. does business, has offices, and/or maintains agents for the
22 transaction of its customary business in Maricopa County, Arizona.

1 5. At all relevant times, Plaintiff was an employee of Stingers Double D, L.L.C.
2 At all relevant times, Defendant Stingers Double D, L.L.C., acting through its agents,
3 representatives, employees, managers, members, and/or other representatives had the
4 authority to hire and fire employees, supervised and controlled work schedules or the
5 conditions of employment, determined the rate and method of payment, and maintained
6 employment records in connection with Plaintiff's employment with Defendant Stingers
7 Double D, L.L.C. In any event, at all relevant times, Defendant Stingers Double D, L.L.C.
8 was an employer subject to the Fair Labor Standards Act (FLSA) and employed Plaintiff.

9 6. At all relevant times, Defendant Dale Hanson owns, operates as a manager of,
10 operates as a member of, and/or possesses a similar interest in Stingers Double D, L.L.C. At
11 all relevant times, Defendant Dale Hanson had the authority to hire and fire employees,
12 supervised and controlled work schedules or the conditions of employment, determined the
13 rate and method of payment, and maintained employment records in connection with
14 Plaintiff's Employment with Stingers Double D, L.L.C. In any event, at all relevant times,
15 Defendant Dale Hanson was an employer subject to the FLSA and employed Plaintiff.
16
17

18 7. Upon information and belief, Defendant Dale Hanson was and continues to
19 be a resident of Maricopa County, Arizona.
20

21 8. At all relevant times, Defendant Dana Hanson owns, operates as a manager
22 of, operates as a member of, and/or possesses a similar interest in Stingers Double D, L.L.C.
23 At all relevant times, Defendant Dana Hanson had the authority to hire and fire employees,
24 supervised and controlled work schedules or the conditions of employment, determined the
25 rate and method of payment, and maintained employment records in connection with
26 Plaintiff's Employment with Stingers Double D, L.L.C. In any event, at all relevant times,
27 Defendant Dana Hanson was an employer subject to the FLSA and employed Plaintiff.

1 Plaintiff's Employment with Stingers Double D, L.L.C. In any event, at all relevant times,
2 Defendant Dana Hanson was an employer subject to the FLSA and employed Plaintiffs.

3 9. Upon information and belief, Defendant Dana Hanson was and continues to
4 be a resident of Maricopa County, Arizona.
5

6 10. Defendant Dale Hanson and Defendant Dana Hanson are spouses who are
7 married. Defendants Dale Hanson and Dana Hanson have caused events to take place giving
8 rise to this Complaint to which their marital community is fully liable.
9

10 11. At all relevant times, Plaintiffs were "employees" of Stingers Double D, L.L.C.,
11 Dale Hanson, and Dana Hanson as defined by the FLSA, 29 U.S.C. § 201, *et seq.*
12

13 12. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to Stingers
14 Double D, L.L.C., Dale Hanson, and Dana Hanson.
15

16 13. At all relevant times, Stingers Double D, L.L.C., Dale Hanson, and Dana
17 Hanson were and continue to be "employers" as defined by FLSA, 29 U.S.C. § 201, *et seq.*
18

19 14. Defendants individually and/or through an enterprise or agent, directed and
20 exercised control over Plaintiff's work and wages at all relevant times.
21

22 15. Plaintiff, in her work for Defendants, were employed by an enterprise engaged
23 in commerce that had annual gross sales of at least \$500,000.
24

NATURE OF THE CLAIM

25 16. Defendants own and/or operate as Stingers Double D, L.L.C, an enterprise
26 located in Maricopa County, Arizona.
27

28 17. Plaintiff had worked as a tipped employee for Defendants in Maricopa
29 County, Arizona for approximately four months.
30

18. Plaintiff was hired on approximately January 1, 2013 and ceased employment with Defendants approximately July 31, 2014.

19. Pursuant to the FLSA, 29 U.S.C. § 203(m), and Arizona wage and hour law, employers may impose a tip credit on their tipped employees' wages of up to \$3.00 per hour, on the condition that, among other requirements, such employees have been informed by the employer of the provisions of 29 U.S.C. § 203(m).

20. Defendants failed to inform Plaintiff of the provisions of 29 U.S.C. § 203(m) at any time over the duration of their employment with Defendants. As such, Defendants were not entitled to impose any tip credit upon Plaintiff's wages, and Defendants should have therefore paid the full Arizona minimum wage to Plaintiffs for all time Plaintiffs worked during the course of their regular 40-hour workweeks.

21. As such, full minimum wage for such time is owed to Plaintiff for the entire time she was employed by Defendants.

22. For the entire duration of Plaintiff Nicole Spreitzer's employment with Defendants, Defendants had a consistent policy and practice of requiring its employees to work well in excess of forty (40) hours per week without paying them time and a half for hours worked over forty (40) hours per week.

23. As a result of Defendants' failure to pay time and a half to Plaintiff for hours worked over forty (40) hours per week, Defendants violated 29 U.S.C. § 207(a).

24. As such, Defendants must pay Plaintiff one-and-one-half times her regular rate of pay for work she performed for Defendants in excess of her regular 40-hour workweek.

1 25. Plaintiff is covered employees within the meaning of the Fair Labor Standards
2 Act (“FLSA”).

3 26. Plaintiff was a non-exempt employee.

4 27. Defendants refused and/or failed to properly disclose to or apprise Plaintiff of
5 her rights under the FLSA.

6 28. Defendants engaged in the regular practice of willfully failing to pay Plaintiff
7 the applicable minimum wage for all time that Defendants suffered or permitted Plaintiff to
8 work.

9 29. As a result of Defendants’ willful failure to pay Plaintiff the applicable
10 minimum wage for all time worked, Defendants paid Plaintiff less than the applicable
11 minimum wage rate for such work that Plaintiff performed over the course of Plaintiff’s
12 regular workweeks.

13 30. Defendants engaged in the regular practice of failing to accurately, if at all,
14 record the time during which Defendants suffered or permitted Plaintiff to work. As such,
15 Plaintiff’s time records, if in existence, underestimate the duration of time each workweek that
16 Defendants suffered or permitted Plaintiff to work.

17 31. As a result of Defendants’ willful failure to compensate Plaintiff the applicable
18 minimum wage rate for such hours worked, Defendants have violated 29 U.S.C. § 206(a).

19 32. Defendants knew that – or acted with reckless disregard as to whether – their
20 failure to pay Plaintiff the applicable minimum wage for all time the Defendants suffered
21 or permitted Plaintiff to work, would violate federal and state law, and Defendants were
22

1 aware of the FLSA minimum wage requirements during Plaintiff's employment. As such,
2 Defendants' conduct constitutes a willful violation of the FLSA.

3 33. Plaintiff's counsel conferred on multiple occasions with Defendants' counsel
4 prior to filing this Complaint. In some of such conferrals, and in order to attempt to find a
5 pre-litigation resolution to this matter, and in the event that the violations alleged within this
6 Complaint are determined not to have been willful, Defendants, through counsel, agreed to a
7 tolling the regular statute of limitations at April 27, 2013.

8 34. Defendants individually and/or through an enterprise or agent, directed and
9 exercised control over Plaintiffs' work and wages at all relevant times.
10

11 35. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover from
12 Defendants compensation for unpaid wages, an additional equal amount as liquidated
13 damages, interest, and reasonable attorney's fees and costs of this action under 29 U.S.C. §
14 216(b).
15

16 36. Plaintiff has retained The Bendau Law Firm, PLLC to represent her in this
17 litigation and has agreed to pay a reasonable fee for the services rendered in the prosecution
18 of this action on her behalf.
19

20 **COUNT ONE: FAIR LABOR STANDARDS ACT**
FAILURE TO PROVIDE NOTICE OF TIP CREDIT TO PLAINTIFFS
21

22 37. Plaintiff realleges and incorporates by reference all allegations in all preceding
23 paragraphs.
24

25 38. Defendants intentionally failed and/or refused to inform Plaintiff of the
26 provisions of the "tip credit" and 29 U.S.C. § 203(m) and its supporting regulations.
27

1 39. Defendants intentionally failed and/or refused to pay Plaintiff the full
2 minimum wage according to the provisions of the FLSA for each and every workweek that
3 Plaintiff worked for Defendants, for the duration of her employment, in violation of 29
4 U.S.C. § 206(a).

5 40. As such, full applicable minimum wage for such time Plaintiff worked is owed
6 to Plaintiff for the entire time she were employed by Defendants.

7 41. Defendants knew that – or acted with reckless disregard as to whether – their
8 failure to pay to Plaintiff the full minimum wage over the course of their employment would
9 violate federal and state law, and Defendants were aware of the FLSA minimum wage
10 requirements during Plaintiff's employment. As such, Defendants' conduct constitutes a
11 willful violation of the FLSA.

12 42. Plaintiff is therefore entitled to compensation for the full minimum wage at an
13 hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages,
14 together with interest, reasonable attorney's fees, and costs.

15 **WHEREFORE**, Plaintiff, Nicole Spreitzer, individually, respectfully requests that
16 this Court grant relief in Plaintiff's favor, and against Defendants Stingers Double D, L.L.C.,
17 Dale Hanson, and Dana Hanson for compensation for unpaid minimum wages, plus an
18 additional equal amount as liquidated damages, prejudgment and post-judgment interest,
19 reasonable attorney fees, costs, and disbursements of this action, and any additional relief
20 this Court deems just and proper.

21 **COUNT TWO: FAIR LABOR STANDARDS ACT**
22 **FAILURE AND/OR REFUSAL TO PAY OVERTIME**

23 COMES NOW, Plaintiff, Nicole Spreitzer, individually, stating:

1 43. Plaintiff realleges and incorporates by reference all allegations in all preceding
2 paragraphs.
3

4 44. At all relevant times, Defendants have been and continue to be employers and
5 enterprise engaged in commerce or the production of goods for commerce, within the
6 meaning of the FLSA, 29 U.S.C. §§ 203(d) and (s), respectively.

7 45. At all relevant times, Defendants employed Plaintiff, and she was employed by
8 Defendants, within the meaning of the FLSA, 29 U.S.C. §§ 203(e) and (g), respectively.
9

10 46. While employed by Defendants, Plaintiff regularly and consistently worked
11 multiple hours of overtime per week, and Defendants did not pay Plaintiff one-and-one-
12 half times her regular rate of pay.
13

14 47. As a result, Defendants have intentionally failed and/or refused to pay
15 Plaintiff overtime according to the provisions of the FLSA.
16

17 48. Defendants further have engaged in a widespread pattern and practice of
18 violating the provisions of the FLSA by failing to pay Plaintiff in accordance with 29 U.S.C.
19 § 207.
20

21 49. For example, during the workweek beginning August 15, 2013, Plaintiff was
22 scheduled, and worked, for more than 40 hours. Defendant failed and/or refused to
23 compensate Plaintiff at one-and-one-half times her regular rate of pay for all time she
24 worked in excess of forty (40) hours.
25

26 50. Plaintiff believes and therefore avers that Defendants owe her similar unpaid
27 overtime wages for all other pay periods for the duration of her employment.
28

1 51. Additionally, while employed by Defendants, Defendants regularly and
2 consistently suffered or permitted Plaintiff to work overtime hours outside of normal
3 business hours and on weekends, yet Defendants did not pay Plaintiff any wage whatsoever
4 for such time she worked. As a result, Defendants additionally failed or refused to
5 compensate Plaintiff one-and-one-half times her regular rate of pay for hours she worked
6 outside of normal business hours and on weekends.
7

8 52. As a result, Defendants have intentionally failed and/or refused to pay
9 Plaintiff overtime according to the provisions of the FLSA.

10 53. Although at this stage, Plaintiff is unable to state the exact amount owed for
11 all time worked during the course of her employment, Plaintiff believes that such
12 information will become available during the course of discovery. Furthermore, when an
13 employer fails to keep complete and accurate time records, employees may establish the
14 hours worked by their testimony, and the burden of overcoming such testimony shifts to the
15 employer.
16

17 54. Defendants knew that – or acted with reckless disregard as to whether – their
18 refusal or failure to properly compensate Plaintiff over the course of her employment would
19 violate federal and state law, and Defendants were aware of the FLSA minimum wage
20 requirements during Plaintiff's employment. As such, Defendants' conduct constitutes a
21 willful violation of the FLSA.
22

23 55. Defendants have and continue to willfully violate the FLSA by not paying
24 Plaintiff a wage equal to one and one half times Plaintiff's regular rate of pay for all time
25 spent performing labor for Defendants in excess of her regular 40-hour workweek.
26

1 56. Defendants individually and/or through an enterprise or agent, directed and
2 exercised control over Plaintiff's work and wages at all relevant times.

3 57. Plaintiff, in her work for Defendant, was employed by an enterprise engaged
4 in commerce that had annual gross sales of at least \$500,000.

5 58. As a result of Defendants failure or refusal to pay Plaintiff a wage equal to one
6 and one half times Plaintiff's regular rate of pay for work she performed for Defendants in
7 excess of her regular 40-hour workweek, Defendants violated 29 U.S.C. § 207(a). Plaintiff is
8 therefore entitled to compensation of one-and-one-half times her regular rate of pay, to be
9 proven at trial, plus an additional equal amount as liquidated damages, together with interest,
10 reasonable attorney's fees, and costs.

13 **WHEREFORE**, Plaintiff, Nicole Spreitzer, individually, respectfully requests that
14 this Court grant relief in Plaintiff's favor, and against Defendants Stingers Double D, L.L.C.,
15 Dale Hanson, and Dana Hanson for overtime compensation in the amount due to her for all
16 of Plaintiff's time worked in excess of forty (40) hours per work week at an amount equal to
17 one-and-one-half times Plaintiff's regular rate while working for Defendants, plus an
18 additional equal amount as liquidated damages, prejudgment and post-judgment interest,
19 reasonable attorney fees, costs, and disbursements of this action, and any additional relief
20 this Court deems just and proper.

23 **COUNT THREE: FAIR LABOR STANDARDS ACT**
24 **REQUIREMENT TO REIMBURSE WALKOUTS AND REGISTERS**
25 **SHORTAGES**

26 COMES NOW, Plaintiff, Nicole Spreitzer, individually, stating:
27

59. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs

60. While Defendants employed Plaintiff, Defendant had a policy requiring its employees to reimburse Defendant for walkouts, register shortages, and breakage from their own tips and other earned wages.

61. Plaintiff was subject to this policy each and every workweek she was employed by Defendants.

62. In a given workweek, Defendant required Plaintiff to pay for walkouts, register shortages, and breakage, despite being paid at the tip credit rate. As a result, Plaintiff's wage fell below the tip credit rate.

63. As a result, Defendants disallowed entirely from taking the tip credit and Plaintiff is entitled to full minimum wage for all time worked.

WHEREFORE, Plaintiff, Nicole Spreitzer, individually, respectfully requests that this Court grant relief in Plaintiff's favor, and against Defendants Stingers Double D, L.L.C., Dale Hanson, and Dana Hanson for unpaid minimum wages while working for Defendants, plus an additional equal amount as liquidated damages, prejudgment and post-judgment interest, reasonable attorney fees, costs, and disbursements of this action, and any additional relief this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this 6th Day of August, 2015.

THE BENDAU LAW FIRM, PLLC

1 By: /s/ Clifford P. Bendau, II
2 Clifford P. Bendau, II
3 Attorney for Plaintiff
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